IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.3.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.12205 of 2001
& W.M.P.No.17830 of 2001

1. Union of India, represented by
   The General Manager,
   Southern Railway
   Park Town.

2. The Chief Personnel Officer,
   Southern Railway,
   Park Town,
   Chennai-600 003.

3. The Divisional Railway Manager,
   Chennai Division,
   Southern Railway,
   NGO Annexe, Park Town,
   Chennai.

4. Senior Divisional Operating Manager,
   Chennai Division,
   Southern Railway,
   NGO Annexe, Park Town,
   Chennai-600 003. .. Petitioners

vs.

1. The Registrar,
   The Central Administrative Tribunal,
   Madras.

2. N.R.Shridhar .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records of the impugned order in O.A.No.920 of 2000 dated 28.3.2001 from the file of the Central Administrative Tribunal, Madras, quash the same.

For petitioners : Mr.R.Thiagarajan, Senior Counsel for
Mr.G.Ramesh

For respondents: R-1 Tribunal
Mr.L.Chandrakumar for R-2

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ORDER

R.SUDHAKAR,J

The present writ petition has been filed by the Union of India, represented by the General Manager, Southern Railway and three other petitioners, namely The Chief Personnel Officer, Southern Railway, The Divisional Railway Manager, Chennai Division, Southern Railway and The Senior Divisional Operating Manager, Chennai Division, Southern Railway. The affidavit in support of the writ petition has been filed by the Senior Divisional Personnel Officer, Chennai Division, Southern Railway, on behalf of all the petitioners. The petitioners challenge the order of the Tribunal dated 28.3.2001 in O.A.No.920 of 2000.

2. The reason for filing of the Original Application started with the issuance of the notification by the Chief Personnel Officer, Southern Railway, Headquarters Office, Personnel Branch, Chennai-3, bearing No.P(S).608/II/Tfc.App./LDCE, dated 28.6.1999, calling for application from eligible employees. The said notification dated 28.6.1999 reads as follows:

"Sub: Filling up of 10% vacancies of Traffic Apprentices by serving employees of operating department.

In terms of instructions contained in Board's letter No.E(NG)/II/84/RC-3-15 (AIRF) dated 15.05.87 circulated under this office letter No.P(RT) 563/I/14/Vol.VII dated 16.6.87 10% of vacancies in the categories of Section Controllers, Station Masters/Traffic Inspectors and Yard Masters in scale Rs.5500-9000 are required to be filled by recruitment of Traffic Apprentices by Limited Departmental Competitive Examination from amongst serving graduates of Traffic Department (other than ministerial staff) below the age of 40 years.

It is proposed to conduct selection for the post of Traffic Apprentices to fill up 69 vacancies (UR-56, SC-8 and ST-5) of Section Controllers in scale Rs.5500-9000 Station Masters/Traffic Controllers in scale Rs.5500-9000 and Yard Masters in scale Rs.5500-9000 from the eligible Group 'C' staff of Operating Branch (other than Ministerial Staff) who are graduates below the age of 40 years.

The requisite qualification for recruitment of Traffic Apprentices is as follows:

(i) Should be graduate from a recognised university.

(ii) Diploma in Rail Transport and Management from the institute of Rail Transport/New Delhi will be a desirable

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qualification.

The employees recruited as Traffic Apprentices will be required to undergo 2 years training as Traffic Apprentices and they will draw stipend of Rs.4500/- in first year and Rs.4625/- in second year. After successful completion of their training they will be absorbed in the working post of Section Controller/Station Master/Traffic Inspector/Yard Masters in scale Rs.5500-9000 according to vacancies subject to clarification from Board in respect of revised replacement scale applicable to Station Masters/Traffic Inspectors/Yard Masters, in the pre-revised scale of Rs.1600-2660 under RS (RP) Rules, 1997 from 1.1.96.

Applications are called for from the eligible employees who volunteer for the above and they may be forwarded to this office along with list of volunteers categorywise and gradewise in the order of seniority as per Proforma enclosed so as to reach this office on or before 31.7.1999 certain."

3. The second respondent herein is the applicant in the Original Application before the Tribunal. His case before the Tribunal is as follows:

The second respondent herein joined the Railway Service in the year 1985 and working as Station Master Grade-III in the scale of pay of Rs.5000-8000. The cadre of Station Master is structured as follows:

10%	Assistant Station Master	- 4500-7000
47%	Station Master Grade-III	- 5000-8000
25%	Station Master Grade-II	- 5500-9000
15%	Station Master Grade-I	- 6800-10500
3%	Station Manager / Transportation Inspectors	- 7450-11500

It is the case of the second respondent that he will be eligible for consideration for promotion to the next higher grade of Station Master Grade-II, in the scale of Rs.5500-9000 but in view of the notification dated 28.6.1999 stating that the Department proposes to recruit Traffic Apprentices by Limited Departmental Competitive Examination under 10% quota open to serving graduates in Group 'C' of the Operating Branch, his chances of promotion are being deprived. It is contended by the second respondent that such reservation or pinpointing of posts in anticipation for the so-called Traffic Apprentices who are not available for appointment at the time of issuance of the notification and for appointment to regular posts after successful completion of the training for a period of two years, would affect his promotional career and therefore, the second respondent filed the Original Application before the first respondent-Tribunal for the following relief:

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"To call for the records relating to the pinpointing of vacancies in the grade of Rs.5500-9000 for appointment of Traffic Apprentices thus denying promotion to the applicant in terms of Chapter-II of the Indian Railway Establishment Manual and to quash the reservation in favour of the Traffic Apprentices and to direct the respondents to arrange to promote the applicant in terms of Chapter-II of the Manual and to pass such other order as this Hon'ble Court may deem fit and thus render justice"

4. Rules for recruitment and training of Group 'C' and Group 'D' and Workshop staff are prescribed in Chapter-I, Section-B of Volume-I of the Indian Railway Establishment Manual (hereinafter called as " the IREM"). Insofar as the post of Traffic Apprentices is concerned, Rule 125 of Chapter-I, Section-B of the IREM provides for filling up of 25% of the vacancies in the categories of Section Controllers, Station Masters, Yard Masters and Traffic Inspectors, by recruitment as Traffic Apprentices, which reads as follows:

"125. (1) 25% of the vacancies in the categories of Section Controllers, Station Masters, Yard Masters and Traffic Inspectors in scale Rs.1400-2600/- 1600-2660 will be filled by recruitment as Traffic Apprentices as under:-

(i) 15% by direct recruitment through the Railway Recruitment Boards and

(ii) 10% through Limited Departmental Competitive Examination from amongst serving staff (other than Ministerial) in the Traffic (Transportation) Department who are graduates and are upto 40 years of age.

(2) Qualification etc. for direct recruitment are as under:

(i) Educational : A University degree or its equivalent. Diploma in Rail Transport and Management from the Institute of Rail Transport will be an additional desirable qualification.

(ii) Age: - Between 20-28 years.

(iii) Training & Stipend:- Period of training will be two years. Stipend : First year : Rs.1400. Second Year Rs.1440.

NOTE: Period of training for those inducted against 15% will also be two years but they will continue to receive the pay and allowances of the post from which they were selected during the period of the training.

(3) Channel of Promotion / Higher grades:

The following higher grades are available to Traffic Apprentices after their absorptions in

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a waiting post for their advancement as per the channel of promotion laid down by the Zonal Railway Administrations keeping the broad policy framework laid down by the Railway Board. Dy. Chief Controller/Dy. Station Supdt. Dy. Yard Master/Traffic Inspector (2000-3200)

Chief Controller Station Supdt. Chief Yard Master/Chief Traffic Inspector (2375-3500). Authority Railway Boards letter No.E(NG)II 84-RC-3/15 (AWRF) dated 15-5-87."

5. The contention of the second respondent is that earmarking of specific number of vacancies to be filled up for the post of Traffic Apprentices, i.e., 10% through Limited Departmental Competitive Examination from among the serving staff and 15% by direct recruitment, namely from the open market, is arbitrary, because, the persons sought to be appointed admittedly are Apprentices and there is no guarantee of appointment to regular post. The second respondent relies upon Rules 1902 and 1914 of Volume-II of the IREM, which read as follows:

"1902: An Apprentice means a person deputed for training in a trade or business with a view to employment in Government service, who draws a stipend at monthly rates from Government during such training but is not employed in or against a substantive vacancy in the cadre of a department (Rule 103 (4) RI)."

"1914: Employment — No guarantee or promise of employment can be given to an apprentice. But on the satisfactory completion of their training the apprentices will be considered for appointment to the post for which they are apprentices subject to the existence of vacancies. They will, however, be taken on probation for a period to be specified in each case."

6. According to the second respondent, there is no guarantee of appointment to regular posts insofar as Traffic Apprentices are concerned and therefore, the reservation made for the Traffic Apprentices to be appointed in the future to fill up the post of Station Master Grade-II is beyond the scope of the Rules and it is submitted that no reservation can be made in respect of an existing post in favour of a person who is not even available for appointment at the relevant point of time. On the contrary, it is contended that if such reservation is avoided, there will be scope for the second respondent to be considered for promotion on merits.

7. Reference was also made to Rule 103 of Volume-I of the IREM, which reads as follows:

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"103: Definitions -- For the purpose of

these rules, unless there be anything repugnant in the subject or context --

(i) A "Group" means a series of classes which form a normal channel of promotion.

(ii) A "Class" comprises all appointments in the same branch or department bearing the same designation.

Illustration — All station masters form a class by themselves, similarly, all assistant station masters are in one class; guards, section controllers, firemen, drivers are other instances of classes.

(iii) "Grades" are sub-divisions of a class, each bearing a different scale of pay. An intermediate grade is any grade in a class, higher than the lowest.

(iv) An "Apprentice" or a "trainee" means a person undergoing training with a view to employment in railway service, who draws pay, leave salary, subsistence allowance or stipend during such training but is not employed in or against a substantive vacancy in the cadre of a branch of deptt. On satisfactory completion of his training he is eligible for appointment of probation in a substantive vacancy but no guarantee of such appointment is given.

(v) "Direct recruitment" means the recruitment to the Group 'C' service of any person not already in the service of the railways or any person in railway service who may be permitted to apply for appointment subject to possession of requisite qualifications along with outsiders according to the procedure laid down for recruitment."

8. It is contended that "Apprentice" or "Trainee" is a person who undergoes some training and having the benefit of some stipend and during the period of training, he is not employed in or against the substantive vacancy in the cadre of a branch of a department and on satisfactory completion of the training, such person is eligible for appointment of probation in a substantive vacancy, but no guarantee of such appointment will be given.

9. Placing reliance on all the abovesaid Rules of the IREM, it is contended by learned counsel for the second respondent that the notification calling for application to fill up the vacancies of Traffic Apprentices on selection and training, would be arbitrary and not contemplated under the IREM.

10. It is the contention of the petitioners-Department that the scheme of recruitment of Traffic Apprentices introduced by the Railway - vide it's letter No.E.(NG).II/84/RC/III/15/AIRF, dated 15.5.1987 envisaged that the recruitment of Traffic Apprentices would be to the grade Rs.1600-2600 (present Rs.5500-9000) and the period of

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training would be two years for inducting qualified and trained persons in the Traffic Department. The All India Station Masters Association challenged this scheme of induction of Traffic Apprentices into the intermediary grade in the category of Station Masters in scale of Rs.1600-2600 (present Rs.5500-9000) before the Central Administrative Tribunal, Ernakulam, contending that the Railway Board's order was detrimental to the interests of the applicants and that the scheme adversely affects the rights of the members of the Association. The Tribunal at Ernakulam, by its order order in O.A.No.67 of 1991, allowed the Application by setting aside the scheme of induction of Traffic Apprentices and quashing the Railway Board's Circular dated 15.5.87 treating the same as only administrative instructions. However, a Civil Appeal was filed by the Union of India before the Supreme Court on the ground that the Tribunal cannot quash the Board's Circular treating the same as administrative instructions and that the Railway Board had only exercised the power vested in them and the recruitment would be to the extent of 25% only, i.e. 15% from open market and 10% by selection of Traffic Apprentices from the serving non-ministerial graduates through the Limited Departmental Competitive Examination. The Supreme Court of India allowed the Civil Appeal in Civil Appeal No.5410 of 1991, dated 6.5.1996, in the case of Union of India vs. M.Basker and others, reported in JT 1996 (5) SC 500, thereby giving its seal of approval to the scheme of induction of Traffic Apprentices.

11. It is thereafter that the petitioners have issued the notification calling for application in order to fill up 69 vacancies for the post of Traffic Apprentices and 10% serving employees quota through Limited Departmental Competitive Examination after a long gap of six years. It is very specifically averred that in view of the pendency of the proceedings before the Tribunal at Ernakulam and the Supreme Court , this delay had occurred and subsequent to the finality reached in the above issue, the proceedings calling for application were taken up. Drawing our attention to the above referred Supreme Court ruling, it is contended by the learned Senior Counsel appearing for the petitioners that the challenge made by the second respondent to the notification dated 28.6.1999, is based on misconception of the term "Apprentice". The term "Apprentice" is used to cover the direct recruits and is distinct from promotees, namely the staff of the Department. The "Traffic Apprentices" who are recruited under 10% Department quota are different and distinct from the "Apprentices" who fall under the Apprentices Act.

12. It is therefore contended by the petitioners that in view of the clear finding of the Supreme Court in the said Civil Appeal, the plea raised by the second respondent is hit by the principle of "res-judicata", as the scheme of appointment of Traffic Apprentices has been approved by the Supreme Court and therefore, the Tribunal in the present case, ought to have rejected the Original Application on this ground alone.

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13. It is also contended by the petitioners that the provisions contained in Rule 1914 of the IREM, Volume-II, is a safety

clause provided to dispense with the services of those Apprentices who are found unfit in the suitability test or who cannot be absorbed for any other reason. It is therefore contended by the petitioners that the reasoning given by the Tribunal that the vacancies/posts should not be earmarked without suitable candidates being available, leads to the situation that after the completion of the training, there will be no post for the persons who have undergone the training and therefore, the persons will have to be discharged and the purpose of giving training to the selected persons for two years, will be defeated. It is based on a misreading of the memorandum and the IREM. It is also factually incorrect. It is stated by the petitioners in the affidavit filed on 18.2.2004 that the training imparted to the Traffic Apprentices is restricted to only those selected under the 15% quota and 10% quota. The promotees who got selected under 75% quota are not given any further training in view of the experience already gained by them. On selection, they are directly posted as Station Master Grade-II. However, in the case of those selected under 15% and 10% quota, they are imparted necessary training for a requisite period. The posts of Station Master Grade-II that are allocated to 15% and 10% quota are not kept vacant since the posts fall under the safety category. These posts are allowed to be manned by those who are eligible to come under the 75% quota on officiating basis, i.e. in stations where there are no employees in Station Master Grade-II, the post of Station Master Grade-II will be officiated by the employees in the next lower grade, viz. Station Master Grade-III and at no point of time, the post of Station Master Grade-II will be allowed to remain vacant. Under the scheme of recruitment of Traffic Apprentices, the post meant for 15% and 10% quota are not allowed to remain vacant, till the selectees complete their training and rejoin in the working post. Therefore, the notification is in order.

14. The contention on behalf of the petitioners, the Department is that Rule 125 of the IREM provides for a scheme for recruitment of Traffic Apprentices for appointment as Station Master with qualified persons to meet the efficiency in the Traffic Department. The notification calling for the application from the Department staff is in conformity with Rule 125 of the IREM and the interpretation sought to be made by the second respondent is without any merit and on a total misreading of the IREM.

15. It is further contended by the petitioners that the second respondent, pursuant to the notification dated 28.6.1999, volunteered for the post of Traffic Apprentice as he was a serving employee under 10% quota available to serving employees, however, on 20.01.2000, the second respondent expressed his unwillingness to appear for the Examination which was to be held on 22.01.2000 and thereafter, he has filed the present Original Application challenging the notification dated 28.6.1999. It is therefore contended that when once the second respondent applied for the post of Traffic Apprentice pursuant to the notification dated 28.6.1999, he is estopped from challenging the scheme of appointment of Traffic Apprentices. It is also contended that the second respondent could not be considered for promotion under 75% promotional quota as

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several employees senior to him were already waiting for promotion and that his seniority was No.37, and since there was no avenue for him to get promoted, the second respondent has filed the Original Application and that too, without impleading the 35 employees who were selected as Traffic Apprentices under 10% serving employees quota. Hence, it is contended that non-joinder of the parties would be fatal to the case of the second respondent/applicant in the Original Application.

16. We have considered the rival contentions made by learned counsel for the parties and the findings of the Tribunal. On going through the order of the Tribunal, it is clear that the Tribunal has not considered the decision of the Supreme Court reported in JT 1996 (5) SC 500 (Union of India and another, etc. etc. vs. M.Bhaskar & Ors.- Civil Appeal No.5410 of 1991, dated 6.5.1996), which has clearly given it's stamp of approval to the scheme for appointment of Traffic Apprentices and memorandum dated 15.5.1987. Relevant observations of the Supreme Court in the said decision are set out hereunder:

> "1. This batch of appeals requires us to decide two questions both of whom are relatable to the Railway Board's memorandum dated 15.5.1987 on the subject of recruitment of Traffic/Commercial Apprentices. The two questions are: (1) the purport of the memorandum; and (2) the validity of the same.
>
> 2. There has been a cleavage of opinion among the various Central Administrative Tribunals (CATs) of the country. Most of the Tribunals have rejected the understanding of the Union of India – the main appellant – relating to the meaning and scope of the memorandum. The Ernakulam Bench of the Tribunal has even regarded the memorandum as invalid.
>
> 3. The broad contents of the memorandum may be noted. It brought about some changes in the recruitment of Traffic/Commercial Apprentices – one of the changes being that on and from 15.5.1987 the recruitment of these Apprentices would be made in the pay scale of Rs.1600-2660 (this scale earlier was Rs.1400-2300) and, instead of *all* the posts being filled up by promotions, ratio of promotees was made 75%, and of the remaining 25%, 10% were required to come through Railway Recruitment Boards and 15% on the basis of Limited Department competitive Examination. The pre-1987 Apprentices laid their claim for the higher scale of pay on the basis of 1987 memorandum; and it is this claim which has come to be allowed by the majority of the CATs.
>
> 5. To decide the controversy, it would be apposite to apprise ourselves as to what was the

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procedure of recruitment before the memorandum in question; and what was really meant by the word 'Apprentices'. We have put this aspect at the forefront because the Tribunals, who have granted the benefit of higher pay scale, have done so, with respect, without applying their mind to the relevant provisions of the Indian Railway Establishment Manual, hereinafter the Manual, dealing with the recruitment of (1) Traffic Apprentices; and (2) Commercial Apprentices. Rule 123 of 1968 Edition of the Manual deals with recruitment of Traffic Apprentices and Rule 127 with Commercial Apprentices. It is apparent from this Manual that the posts to be held by Traffic Apprentices before the 1987 were of: (1) Assistant Station Masters; (2) Assistant Yard Masters; (3) Traffic Inspectors; and (4) Section Controller (in the scale of Rs.1400-2600). Insofar as Commercial Apprentices are concerned, these posts were of: (1) Assistant Claims Inspectors/Supervisors; (2) Assistant Commercial Inspectors; (3) Assistant Rates Inspectors (Goods and Coaching); and (4) Other Inspectors for outdoor duties. This apart, the pre-1987 position was that in the Traffic and Commercial Departments, posts in the pay scale of Rs.1400-2300 were being filled up to the extent of 25% by direct recruits, of which 15% were from open market and 10% from Limited Departmental Competitive Examination; and the balance 75% by promotion from lower grade. Further, the term 'Apprentices' was being actually used to cover 'direct recruits', as distinct from 'promotees'. Another thing to be noted, which again missed the Tribunals in question, is that when the pay scale of Rs.1400-2300 was being paid to Traffic/Commercial Apprentices, the higher pay scale of Rs.1600-2660 was being paid to those who were in a higher grade.

9. This leaves for consideration the question of validity of the memorandum. The Ernakulam Bench, which held the memorandum invalid, did so for the reason that the Railway Board, which had issued the memorandum, could not have changed the provisions finding place in the Establishment Manual, which are statutory in nature, whereas the memorandum was categorised as administrative instruction. Now there is no dispute in law that statutory provision cannot be changed by administrative instruction. But then, the Tribunal, despite having noted Rule 1-A of the Indian Railway Establishment Code (Volume-I) as published on 21st March, 1951 reading:

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> "Normally recruitment will be to the lowest grade of the lowest class but direct recruitment on limited scale to intermediate grades will be made in accordance with instructions laid down by the Railway Board from time to time"

ultimately failed to bear in mind the aforesaid provision. Rule 1-A which had come to be made pursuant to the power conferred by the proviso to Article 309 and having stated that the recruitment in the lowest grade will be made in accordance with the instructions laid down by the Railway Board from time to time, the rule itself permitted the Railway Board to issue necessary instructions, and the memorandum of 1987 having been issued by the Railway Board in exercise of this power, we hold that Board had valid authority to issue the memorandum.

17. All the appeals, therefore, stand disposed of by setting aside the judgments of those Tribunals which have held that the pre-1987 Traffic/Commercial Apprentices had become entitled to the higher pay scale of Rs.1600-2660 by the force of memorandum of 15.5.1987. Contrary view taken is affirmed. We also set aside the judgment of the Ernakulam Bench which declared the memorandum as invalid; so too of the Patna Bench in appeal @ SLP(C) No.15438 of 1994 qua respondent No.1. We also state that cases of respondents 2 to 4 in appeals @ SLP(C) Nos.2533-35 of 1994 do not stand on different footing."

Therefore, the challenge in the present writ petition will attract the bar of res-judicata.

17. On a reading of the relevant Rules of the IREM, it is seen that the 10% quota applicable to the Departmental staff to fill up 25% vacancies of Traffic Apprentices after passing the Limited Departmental Competitive Examination by undergoing training, will not categorise them as a fresh Apprentices as defined under the Apprentices Act. The Tribunal apparently has failed to take into consideration the difference between the Apprentices as defined under the Apprentices Act and the Traffic Apprentices sought to be recruited by memorandum dated 15.5.1987. That the Apprentices do not have any right for employment or appointment against a substantive vacancy in the cadre in the department, is also based on misconception. The nature of appointment of the Traffic Apprentices has been clearly spelt out in the affidavit which is extracted in paragraph 13 above. Therefore, the plea of the second respondent that reservation made for Traffic Apprentices to be appointed in future to fill up the post of Station Master Grade-II, is factually incorrect. The relevant Rule of the IREM was reiterated to hold that there was

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no guarantee of employment to such Apprentices and therefore, the notification pinpointing vacancy was not in accordance with the provisions contained in the IREM. We find the contention as totally untenable and fanciful in view of what has been stated above.

18. The scheme for appointment of Traffic Apprentices as set out above, has been clearly affirmed by the Supreme Court and in accordance with the scheme and Rule 125 of the IREM, 10% of 25% of the vacancies is earmarked for serving staff who are already employed by the Railways. The provision of direct recruitment in the intermediate grade of Station Master Grade-II is meant only to infuse talented young persons who can effectively and efficiently man the stations, yards, train operations, to meet the challenges involved in public utility service. The departmental staff, after successful completion of training, will be absorbed to the vacancies earmarked. Therefore, the finding of the Tribunal that there is no guarantee of appointment against the substantive vacancy, does not have any merit.

19. The Tribunal came to the erroneous conclusion that the reservation in the existing post of Station Master Grade-II in favour of Traffic Apprentices after completion of training for a period of two years is unjustified. The reasoning given by the Tribunal that there are no Traffic Apprentices available for absorption and it will be known only in the future and therefore, earmarking of vacancies was ill-founded and partisan, is an observation which is totally misconceived. This observation of the Tribunal is contrary to the judgment of the Supreme Court reported in 1997 (1) SLJ (SC) 178 at 181 (Ashwani Kumar and Others vs. State of Bihar and others), wherein, it has been observed that the existence of post or vacancy is a "sine qua non" for making appointments to such posts or vacancies. In the present case, only after determining the number of vacancies, the procedure for allocation of 15% by direct recruit and 10% through Limited Departmental Competitive Examination among serving staff, has been fixed. In such view of the matter, it is for the Department to specify the number of posts that will be available to be filled up before the steps are taken for selection of candidates.

20. Learned counsel for the contesting respondent placed reliance on a Division Bench judgment of this Court reported in 2005 (3) S.L.R. 665 (Union of India and another vs. The Registrar, Central Administrative Tribunal, Chennai and others) and stated that the interpretation of the term "Apprentice" has been considered by this Court and therefore, the same analogy would apply to the "Traffic Apprentice" also. The said Division Bench judgment of this Court is an interpretation of the term "Apprentice" under the Apprentices Act, 1961. One of the contentions in that case was whether the benefit would be applicable to "Apprentice" in the event of non-registration of the contract under the Apprentices Act, 1961 and for consequential benefits. The bone of contention in that case was that the contract should have been registered under Section 4 of the Apprentices Act. Further, the contention in that case was in relation to employment of such Apprentices in accordance with Paragraph 159 of the IREM. It was held that the persons undergoing Apprenticeship under the

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Apprentices Act are eligible for a certificate which would entitle them to seek employment before any other organisation in the event of not being absorbed by the Railway Department. It is therefore clear that the said Division Bench judgment of this Court relied on by the contesting respondent herein, has no connection with the 'Traffic Apprentice' under Rule 125 of the IREM, as the contesting respondents in that case have undergone training under the Apprentices Act, 1961. Therefore, the factual matrix in the present case is totally different from that of the said Division Bench judgment of this Court reported in 2005 (3) S.L.R. 665. We therefore find that the abovesaid case is not applicable to the facts of the present case.

21. It is clear that the Tribunal has come to erroneous conclusion to compare the Traffic Apprentices as contemplated under Rule 125 of the IREM with that of the raw Apprentices. The 10% quota fixed is only for serving department staff who are already serving the Railways for sufficient number of years and became eligible for the lateral induction under the scheme. This misconception is the cause for the Tribunal to find fault with the notification.

22. The Tribunal also failed to take into consideration that the percentage distribution of posts is a matter of policy of the Department concerned and therefore, the Tribunal is not correct in interfering with such procedure. It is not as if the second respondent's opportunities have been curtailed. On the contrary, 75% of the total number of posts of Station Master Grade-II are filled up by promotion and as and when the second respondent reaches the seniority, he would be suitably selected. It is now stated that the second respondent has been subsequently promoted on 16.4.2002 as Station Master Grade-II in usual course. It was open to the second respondent to participate in the Examination and get the benefit of the scheme. Having failed in his attempt, the challenge which is now made before the Tribunal is nothing but a futile attempt in vain.

23. For the reasons stated above, we find that the impugned order of the Tribunal is liable to be interfered with and the same is quashed. The writ petition is allowed. No costs. W.M.P. is closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The General Manager,
Union of India,
Southern Railway
Park Town.

2. The Chief Personnel Officer,
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Chennai-600 003.

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5. The Registrar,
The Central Administrative Tribunal,
Madras.

+1cc to Mr.L.Chandrakumar, Advocate Sr 15936
+1cc to Mr.G.Ramesh, Advocate Sr 15509

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